

**BEFORE THE PUBLIC SERVICE COMMISSION**  
**OF THE STATE OF DELAWARE**

IN THE MATTER OF THE APPLICATION OF     )  
DELMARVA POWER & LIGHT COMPANY         )  
FOR APPROVAL OF THE 2015 PROGRAM         )   PSC DOCKET NO. 14-0560  
FOR THE PROCUREMENT OF SOLAR             )  
RENEWABLE ENERGY CREDITS                )  
(FILED DECEMBER 9, 2014)                 )

**ORDER NO.   8764**

**FINDINGS OF FACT, CONCLUSIONS OF LAW,  
AND FINAL OPINION IN SUPPORT OF ORDER NO. 8717**

**AND NOW**, this 21<sup>st</sup> day of July, 2015, the Delaware Public Service Commission ("Commission") issues the following findings and opinion in support of Order No. 8717, dated March 3, 2015.

**Summary of the Evidence**

1.     On December 9, 2014, pursuant to 26 *Del. C.* §351 et seq., Delmarva Power & Light Company ("Delmarva") filed an application (the "Application") with the Commission requesting approval of its 2015 Program for the Procurement of Solar Renewable Energy Credits (the "2015 Program").

2.     The 2015 Program is based upon the requirements set forth in the Renewable Energy Portfolio Standards Act ("REPSA") as enacted in 2007 and subsequently amended. See 26 *Del. C.* §§351 - 364. The 2011 Amendments made Delmarva responsible for procuring RECs and SRECs necessary for compliance with respect to all energy delivered to Delmarva's distribution customers beginning in compliance year 2012 (June 2012 - May 2013).

3. The 2015 Program is also based on recommendations from the Renewable Energy Taskforce (the "Taskforce"),<sup>1</sup> which is charged with making such recommendations to the Commission and other entities, as well as prior Delmarva procurement programs,<sup>2</sup> all of which the Taskforce developed and the Commission previously approved.

4. According to Delmarva's Application, "The purpose of the 2015 Program is to continue the goals of the SREC Programs of creating a market for SRECs in Delaware and providing a mechanism for the procurement of SRECs to ensure that retail electricity suppliers meet the requirements set forth in the REPSA." See Application at 5-6.

5. The 2015 Program will utilize a public solicitation for SRECs for different categories of solar generators based on their capacity. See App. at 6 and Ex. A. The 2015 Program will procure SRECs from five different tiers of solar generators, with three tiers under the category of "New Systems" and two under the category of "Existing Systems." *Id.* at 7 and Ex. A at 8. All five tiers will be competitively bid, as they were in the 2014 Program. *Id.*; Ex. A at 19.

6. Based on Delmarva's forecasted load, it intends to procure a minimum of 9,000 SRECs through the long term auction as follows:

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<sup>1</sup> See 26 Del. C. §§360(d), (d)(2), and (d)(3).

<sup>2</sup> See the Pilot Program for the Procurement of Solar Renewable Energy Credits, the 2012 Program for the Procurement of Solar Renewable Energy Credits, the 2013 Program for the Procurement of Solar Renewable Energy Credits, and the 2014 Program for the Procurement of Solar Renewable Energy Credits.

Tiers N-1, E-1, and E-2 = 4,400 SRECs;

Tier N-2 = 2,300 SRECs; and

Tier N-3 = 2,300 SRECs.

7. After it acquires the 9,000 SRECs, Delmarva may procure up to 3,000 additional SRECs through the auction, regardless of the tier, using the least expensive SRECs from New Systems and Existing Systems. See App. at 8; Ex. A at 21-22.

8. Each owner whose bid is selected will enter into a standard form "Transfer Agreement" with the SEU.<sup>3</sup> See Ex. A at Appendix A. The form of the Transfer Agreement is largely the same as the one used for the 2014 Program and has been modified only to take into account changes in the 2015 Program. See App. at 8. Each Transfer Agreement will have a term of 20 years. *Id.*; Ex. A at 12. For the first ten years of the Agreement, the SREC price will be the accepted bid price. *Id.*; Ex. A at 14. For the remaining ten years of the Agreement, the SREC price will be fixed at \$35.00 per SREC. *Id.*; Ex. A at 14.

9. The primary differences between the 2014 Program and the 2015 Program are as follows:

a. An increase in the authorized number of SRECs to be purchased through the long term auction;

b. For the first 10 years of the contract, the bid price will be paid for the SRECs, and for the remaining ten years of the contract, \$35.00 per SREC will be paid;

c. No bids will be permitted in multiple tiers unless a tier is undersubscribed;

d. No bids above \$400.00 will be accepted;

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<sup>3</sup>Because Delmarva found the SEU to be effective in administering prior SREC Programs, it proposes that the SEU will also administer the 2015 Program. *Id.* at 6.

e. Owners of Existing Systems who default on their bids by not signing a contract will not be permitted to bid in the subsequent long-term auction; and

f. Delmarva reserves the right to reject any or all bids above a threshold price per SREC (as determined by Delmarva).

See App. at 9.

10. The Application included an outline for the 2015 Program, the form of SREC Transfer Agreement that is used in connection with the 2015 Program, and the redlined proposed changes between the 2014 Program and the 2015 Program.

11. Delmarva requested the Commission to schedule the matter for decision no later than February 2015. See App. at p. 9. Delmarva also noted that the Taskforce recommended that the next auction for SRECs for the compliance year starting June 1, 2015, begin no later than April 30, 2015. See App. at Ex. C.

12. On January 6, 2015, in Order No. 8698, the Commission ordered Delmarva to provide public notice of the Application in two newspapers on or before January 16, 2015, and to file affidavits of such publication on or before the start of the evidentiary hearings for this matter. See Order No. 8698, ¶1. The Commission also set February 13, 2015, as the deadline for written comments and petitions to intervene, and designated Mark Lawrence as the hearing examiner for this matter for the sole purpose of granting or denying intervention petitions and motions for admission of counsel pro hac vice. *Id.* at ¶¶2-3.

13. On December 16, 2014, the Division of the Public Advocate (the "DPA") filed its statutory notice of intervention in this matter.

14. Delmarva filed the affidavits of publication in two different newspapers on January 15, 2015.

15. On February 11, 2015, the Delaware Department of Natural Resources and Environmental Control Division of Energy and Climate ("DNREC") filed a petition to intervene in this matter.

16. On February 25, 2015, Delmarva filed an amendment to the Application to clarify that bids above a determined price, as established by Delmarva (and not the SEU) can be rejected. On that same day, the Hearing Examiner granted DNREC's petition for leave to intervene. See Order No. 8719.

17. On March 3, 2015, the Commission conducted a public evidentiary hearing on the Application.

18. At the evidentiary hearing, Glenn Moore, Delmarva's Regional Vice President, testified about the 2015 Program. He first reported that the outcome from the 2014 auction had been very successful (with one caveat). See Tr. at 12. Mr. Moore stated that the 2014 average auction price was slightly above \$71.00 per SREC,<sup>4</sup> which was extremely low compared to the [prices in the] surrounding states, and was significantly lower than any other jurisdiction in which Pepco Holdings, Inc., the parent of Delmarva, does business. See Tr. at 12-13. He further

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<sup>4</sup> Although Mr. Moore referred to "RECs," these are in fact "SRECs" here.

testified that although Delmarva received very good prices in the 2014 auction, that auction was slightly undersubscribed, whereas the 2013 auction was three or four times oversubscribed. See Tr. at 13. Mr. Moore believed one reason for this result was because in 2013 and 2014, some bids were zero dollars for the first seven years. See Tr. 13-14. Mr. Moore testified that Delmarva believed that those zero dollar per SREC prices probably kept some people on the sidelines for 2014. See Tr. at 14. When the number of bidders dropped, Mr. Moore believed that actually raised the SREC price a little. *Id.*

19. For 2015, Mr. Moore testified that he believed Delmarva would procure a significant amount of SRECs at a very competitive price compared to the other jurisdictions in which Pepco Holdings, Inc. does business. See Tr. at 15.

20. Next, Mr. Moore testified regarding the differences between the 2014 Program and the 2015 Program. First, he stated that Delmarva is increasing the number of SRECs it will buy from 7,000 to 9,000. *Id.* In addition, Delmarva can choose to buy (at its discretion and regardless of tiers) up to 3,000 more of the least expensive SRECs. *Id.* at 16. Hence, it is possible that Delmarva could buy up to 12,000 SRECs in total as part of the 2015 Program. *Id.* Next, the price of the SRECs for the first ten years would be based on the bids while the price for the next ten years would be set at \$35.00 per SREC. *Id.* Third, while no bids above \$400.00 would be accepted, Delmarva had the right, in its discretion, not to accept bids above a price that

the company deems to be too high. *Id.* Furthermore, if a person bids into the auction and decides not to provide their SRECs to Delmarva after having been awarded the price, that person would not be eligible for any long-term contracts in subsequent years; Mr. Moore explained this was necessary to ensure that Delmarva would receive those SRECs that were bid into the auction. *Id.* at 18. Finally, if a system is bid into the auction and that system wants a bonus for using labor from Delaware or materials from Delaware but has not been identified as qualifying for such a bonus, the SEU has the option to not return the bid deposit and decline to enter into a transfer agreement with the owner of such system. *Id.* Mr. Moore also noted that Delmarva filed a modification to the Application to clarify that only Delmarva has the right to set a price above which bids would not be accepted. *Id.* at 19.

21. Mr. Moore also testified about a memorandum filed by Staff which raised an issue regarding DNREC's pending rulemaking process to develop regulations to implement the RPS cost cap provisions. *Id.* at 20. Mr. Moore stated that no determination could be made regarding the RPS cost caps until after the final DNREC regulations were adopted and implemented. See Tr. at 21. In addition, Mr. Moore pointed out that the legislation on RPS cost caps has two components; first, DNREC develops the rules and determines whether they have exceeded the rules, but then the Director of the Division of Energy and Climate has the decision to freeze or not to freeze Delmarva's purchase of

SRECs. *Id.* Hence, Mr. Moore concluded that even if the new DNREC rules are issued and the threshold has been exceeded, the Director of the Division of Energy and Climate still determines whether Delmarva's purchase of SRECs should be frozen. *Id.* Mr. Moore concluded by stating that Delmarva is required to and has an obligation to obtain these SRECs, that certainty is an important component to the process, and that a delay could have a significant impact on the amount and cost of SRECs available through the auction. *Id.* at 22.

22. Robert Underwood, Program Administrator for DNREC's Division of Energy and Climate and the Director of the Taskforce, and Thomas Noyes, Principal Planner for the Utility Policy DNREC Division of Energy and Climate, testified in support of the 2015 Program. See Tr. at 24-27 and 32-35. Mr. Underwood described the role of the Taskforce in developing the 2015 Program as well as the lessons learned and the areas in which the Taskforce could improve. He stated that there has been a lot of stakeholder involvement in the process, including the DPA, PSC Staff and Delmarva. See Tr. at 25-26. Mr. Underwood also testified that in DNREC's view, the 2015 Program was designed to maximize price discipline through competitive bidding while meeting the requirements of the REPSA. *Id.* at 26. Mr. Noyes testified that the 2015 Program was the result of carefully considered adjustments to the 2013 and 2014 Programs and that the 2015 Program included additional flexibility while meeting the overall requirements of the statute. *Id.* at 34-35.

He also testified that DNREC supported the 2015 Program and urged the Commission to adopt it. *Id.* at 35.

23. Although the DPA did not present a witness, counsel to the DPA did state that the DPA's office had participated very actively in the Taskforce process and in the Taskforce negotiations. See Tr. at 35-36. In addition, the DPA noted that the Public Advocate had been vocal in previous years when the SREC auction parameters had been discussed in asking for changes to the auction and the procedures being considered to make the auctions more favorable to ratepayers. *Id.* at 36. The DPA was satisfied that the changes made to the 2015 Program addressed its concerns with respect to those procedures, and therefore supported the 2015 auction parameters as proposed. *Id.*

24. Clishona Marshall, a Staff Public Utilities Analyst, testified that she had reviewed the Application and compared it against the previous years' applications. *Id.* at 37-38. She testified that she had filed a memorandum which included a discussion of the issue regarding the proposed cost cap regulations from DNREC. *Id.* at 39. She indicated that Staff had performed some rough calculations without many of the externality features that DNREC would have included if it had performed the calculations. *Id.* at 39. She then testified that based on these calculations and the proposed regulations as they existed in December of 2015, it appeared as though the cost cap in the REPSA may have been reached; however, she also testified

that with changes to the regulations, and inclusion of other factors such as externalities, the cost cap may not be exceeded. *Id.* at 39-40. Nevertheless, Staff recommended that the 2015 Program be approved without any changes. *Id.* at 41.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

25. The Application requested that the Commission approve the 2015 Program.

26. The Commission has jurisdiction over this matter pursuant to 26 *Del. C.* sub. ch. III-A, "Renewable Energy Portfolio Standards."

27. The Commission must determine whether the proposed 2015 Program complies with REPSA. For the reasons that follow, we find that the 2015 Program meets the criteria of REPSA and is in the public interest. Therefore, based upon the evidence presented, we approve the Application as submitted and as set forth in Order No. 8717 (March 3, 2015).

28. The purpose of REPSA is to "establish a market for electricity from [renewable energy resources] in Delaware, and to lower the cost to consumers of electricity from these resources." 26 *Del. C.* §351(c). REPSA further acknowledged that a market for renewable energy resources in Delaware would improve air quality and public health; increase electric supply diversity; protect against price volatility and supply disruption; improve transmission and distribution; and create new economic development opportunities. 26 *Del. C.* § 351(b).

29. To meet these objectives, REPSA requires Delmarva to purchase a minimum percentage of sales<sup>5</sup> from Eligible Energy Resources (as defined in REPSA) to meet a portion of all Delaware retail energy suppliers' annual retail load. REPSA was amended in 2010 to create the Taskforce. 26 *Del. C.* §360(d). The Taskforce is charged with making recommendations about and reporting on trading mechanisms to support the growth of renewable energy markets, particularly establishing a balanced market mechanism for REC and SREC trading, and establishing the deployment of solar energy technologies with the least impact on retail electricity suppliers, municipal electric companies, and rural electric cooperatives. *Id.* Its members include representatives of the DPA, the Commission, Delmarva, the Delaware Electric Cooperative, municipal electric companies, the SEU, the Delaware Solar Energy Coalition, and members appointed by the DNREC Secretary, *Id.* §360(d)(1).

**NOW, THEREFORE, IT IS HEREBY ORDERED BY THE AFFIRMATIVE  
VOTE OF NOT FEWER THAN THREE COMMISSIONERS:**

30. The 2015 Program is approved as submitted for the reasons expressed above.

31. The Commission reserves the jurisdiction and authority to enter such further Orders in this matter as may be deemed necessary or proper.

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<sup>5</sup> REPSA sets forth the minimum percentage of retail energy sales to end-users that must come from Eligible Energy Resources, including solar photovoltaics, which increases over time to a requirement of 25% in 2025. 26 *Del. C.* §354(a).

**BY ORDER OF THE COMMISSION:**

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Chair

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Commissioner

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Commissioner

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Commissioner

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Commissioner

Attest:

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Secretary